

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

EVABELEN S.,

Claimant,

OAH Case No. 2010110627

and

**SOUTH CENTRAL LOS ANGELES
REGIONAL CENTER,**

Service Agency.

DECISION

David Rosenman, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter at the South Central Los Angeles Regional Center, in Los Angeles, on June 28, 2011.

Claimant Evabelen S. was present and was represented by Odilon Urtiz, a non-attorney representative.¹ The South Central Los Angeles Regional Center (SCLARC or the Service Agency) was represented by Johanna Arias-Bhatia, Fair Hearing/Government Affairs Manager. Oral and documentary evidence was received and argument made, the record was closed and the case was submitted for decision on June 28, 2011.

ISSUE

The parties agreed that the issue to be decided by the ALJ is: May the Service Agency terminate funding for Claimant's independent living services?

¹ Claimant is referred to by her initials to protect her confidentiality.

FACTUAL FINDINGS

1. Claimant is a 28-year-old woman (date of birth February 1, 1983). Claimant has been diagnosed with cerebral palsy.

2. The Service Agency currently funds 15 hours per month of independent living services (ILS) provided to Claimant by Partnership for Active Learning Services, Inc. (PALS).

3. In a Notice of Proposed Action letter (NOPA) dated November 24, 2010 (Exhibit 1), SCLARC notified Claimant that the funding for Claimant's ILS would cease after 30 days. Two reasons were given: Claimant had received ILS for more than six months and had no present plan to move from her family's home, and SCLARC believed that Claimant had met the goals for which Claimant had been receiving ILS.

4. Claimant filed a Fair Hearing Request dated November 12, 2010 (Exhibit 2). Claimant has continued to receive ILS pending the outcome of this hearing.

5. Claimant has limited mobility, and presently uses a wheelchair. At an Individual Program Plan (IPP) meeting February 11, 2010, Claimant expressed interest in attending college and also increasing her ability to access resources. It was agreed that an ILS evaluation would take place. The IPP also noted that Claimant was receiving 26 hours per month of In Home Supportive Services (IHSS), which is a program administered by the county, and that Claimant received much support at home from her mother and sister and intended to continue to reside in the family home. (Exhibit A.)

6. Claimant was assessed for ILS by PALS, which prepared an individual service plan dated March 10, 2010 (Exhibit D). Three goals were identified, each with an objective and a plan. Goal one was for Claimant to schedule her own medical appointments and maintain stable health, with the objective that she would receive training for scheduling medical and dental appointments. Goal two was for Claimant to major in business relations and transfer to the California State University, with the objective that she continue her education and enhance her knowledge. Goal three was for Claimant to schedule her own medical appointments and be safe around her home and community, with the objective that she would learn how to perform self-help skills.

7. PALS provided ILS to Claimant beginning April 23, 2010, and submitted a progress report after five months (Exhibit C). Of note, Claimant was then using a walker and in need of a new wheelchair. (Claimant now has a new wheelchair.) With the help of the ILS educator, Claimant applied to community college and accessed resources for financial aid, assessment testing, transportation assistance, disabled student services and other services. Claimant started classes at the community college. She was improving in her self-advocacy and wanted access to more resources in the community to benefit her lifestyle and education.

8. A second progress report from PALS covers the period September 23 to December 23, 2010 (Exhibit B). The ILS educator had assisted Claimant in addressing many of her health needs, and Claimant was attending college classes. Work was planned on obtaining a new wheelchair and gaining access to transportation services. Improvement was being made in self-advocacy and self-help skills, with plans for more training in these areas.

9. ILS services from SCLARC are provided under a written policy (Exhibit 7), which describes ILS, discusses the two tiers of services (comprehensive and maintenance), as well as the criteria to begin and to continue ILS. Based on goals established in the IPP, ILS goals “may consist of either residing independently in their own apartment, or enhancing independent living skills while residing with their natural family.” After the initial assessment, “ILS programs . . . provide specific training in deficit areas, and provide time-limited transition and monitoring services” that will enable the consumer to live independently or semi-independently. Comprehensive services may include instruction in subjects such as “cooking, cleaning, shopping, menu planning, meal preparation, money management, use of public transportation, task completion, homemaking skills, self-reliant behaviors, sex education, family and parenting skills as well as community resource awareness (e.g., police, fire, or emergency help).” “If the consumer’s goal is to live independently, the services may also help the consumer save money to facilitate move-in costs including first and last month’s rent and basic furnishings, and work with the consumer to locate a suitable apartment.” Maintenance service “provides support/reminders/encouragement/monitoring for individuals to perform at their fullest potential for independent living and provides maintenance for tasks that were learned in Comprehensive ILS. This service is part of a continuum of independent living skills services and reinforces previous or ongoing independent living skills training. Additionally, consumers who are living independently are encouraged to maintain supportive contacts with family members, community organizations, friends and others who can offer them occasional assistance and advice. ILS Maintenance services are designed to complement, not replace those support systems.”

10. Under the written policy, the criteria to be eligible for ILS include: (1) that the consumer has appropriate skills before starting the service “to complete the Comprehensive training component (if any) within approximately 6-12 months as indicated by an independent living training skills assessment”; (2) the consumer understands and accepts the goals of the program; (3) there are no medical or behavioral issues that would prevent the development of independent living skills; (4) there is no generic resource; and (5) there is no requirement for continuous monitoring that would preclude a consumer from being unsupervised. There are two added criteria for those who wish to live independently in the community, which is not the case for Claimant.

11. Under the written policy, the assessment is to target the skills necessary to meet the consumer’s goals, whether to live independently or to live with the natural family, and include a plan for services. Under the policy, comprehensive services “will be time-limited” (not to exceed one year at 60 hours per month maximum) and shall focus on specific

objectives related to independent living. If Maintenance services will be purchased alone, they shall not exceed 40 hours per month.” The vendor is to supply periodic progress reports. “It is expected that after one year, the vendor would transition the consumer out of any Comprehensive services they may be receiving, and into a Maintenance-only program. If the goal of the consumer was to continue living with the natural family, services will end after one year.”

12. The written policy also states: “Continuation of funding beyond the initial 6-month authorization must be based on documented progress and realistic expectation of achievement of time-limited objectives. If, after one year, no progress has been made towards independence (e.g., consumer has not saved money for deposit, or an apartment has not been located), SCLARC may terminate funding of Comprehensive services, or provide technical assistance (e.g., help vendor/consumer negotiate with landlord), pursuant [to] Title 17 regulations. The review and any recommendations for continuation of funding shall consider alternatives for helping the consumer achieve greater independence in living, and be identified in the Consumer’s IPP. Those consumers who have successfully completed a Comprehensive ILS program may continue to receive Maintenance ILS when it is needed to maintain the consumer’s independent living arrangement in the community.”

13. It is clear from Claimant’s IPP’s that she does not want to move from the family home. Under these circumstances, SCLARC’s written policy on ILS would permit Claimant to receive ILS for a maximum of one year. After the first six months of ILS, services would continue if there was documented progress and “a realistic expectation of achievement of time-limited objectives.” The written policy is clear in establishing a limit of one year for ILS, with the potential for further ILS only if it is Maintenance services for a consumer living independently, which would not apply to Claimant.

14. Claimant has clearly gained benefit from the ILS she has received and PALS has provided her with valuable tools and skills that have aided Claimant to, among other things, advance her education, expand her mobility, gain access to other resources and improve her self advocacy. Claimant and her mother would like ILS to continue. What is missing in the evidence is any transition plan from PALS, or any service coordination from SCLARC to maintain the independent living skills that Claimant has learned as well as address her continuing and changing needs. There is no jurisdiction in this proceeding to order PALS to do anything. No order will issue concerning the service coordination that SCLARC might consider for Claimant, as that issue was not identified in the Fair Hearing Request. However, it is recommended that SCLARC consider such a course of action, as the termination of ILS creates a change in circumstances that might be addressed before the next annual IPP review.

15. SCLARC contends that Claimant can request further IHSS hours, and has offered to assist Claimant in that process. SCLARC contends that IHSS provides a personal assistant who might be able to assist Claimant in some activities. As noted above, SCLARC does not administer IHSS and, while its witnesses provided limited information about the nature of IHSS benefits, SCLARC could have presented written information from IHSS or other more

specific evidence to establish the nature of those services. Based on the information presented at the hearing there was insufficient evidence from which to conclude that IHSS would be a generic resource that would provide the same services that Claimant is seeking by having PALS continue to provide ILS to her.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, §§ 4500 et seq.) A state level fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of the Service Agency's decision. Claimant properly and timely requested a fair hearing and therefore jurisdiction for this case was established. (Factual Findings 1-4.)

2. Where the Service Agency seeks to reduce and ultimately discontinue a service it has previously funded, Service Agency has the burden to demonstrate that its decision is correct. In this case, Service Agency had the burden to show that funding for the existing ILS should be eliminated, as set forth in the NOPA.

3. Welfare and Institutions Code section 4501 requires the state, through the regional centers, to provide an array of services and supports which is sufficiently complete to meet the needs and choices of each person with developmental disabilities. These are services and supports that will allow such persons, "regardless of age or degree of disability, and at each stage of life" to integrate "into the mainstream life of the community" and to "approximate the pattern of everyday living available to people without disabilities of the same age." Persons with developmental disabilities have the right to treatment and habilitation services and supports which foster the individual's developmental potential and are "directed toward the achievement of the most independent, productive and normal lives possible." The regional centers will work with consumers and their families to secure "those services and supports that maximize opportunities and choices for living, working, learning and recreating in the community." (Welf. & Inst. Code, § 4502.)

4. Welfare and Institutions Code section 4646.5 defines the content of the planning process for the IPP. It must include a statement of goals based on the consumer's needs and time limited objectives for implementing the goals. The goals and objectives should maximize opportunities for the consumer to develop relationships, be part of community life and to develop competencies to help accomplish the goals. The IPP process must also include a schedule of the type and amount of services and supports to be purchased by the regional center or obtained from generic agencies or other resources in order to achieve the IPP goals and the identification of the providers of services.

5. Welfare and Institutions Code section 4646, subdivision (a), states, in pertinent part:

“It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual. . . . It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.”

6. The statutory directives to the Service Agency to accomplish its goals in a cost-effective manner and to control costs as far as possible and to otherwise conserve resources that must be shared by many consumers are found in other sections of the Lanterman Act. (See, e.g., Welf. & Inst. Code, §§ 4512, subd. (b), 4640.7, subd. (b), 4648, subd. (a)(11), 4651, subd. (a), 4659, 4669.2, subd. (a)(2), 4685 and 4697.)

7. There is sufficient evidence supporting the Service Agency’s position that Claimant has received ILS longer than set forth in the service policy. The time limitations in the service policy are clear and an apparent effort to reflect the cost-effective use of public resources, as noted in Conclusions 5 and 6. The Service Agency may terminate funding for Claimant’s ILS.

ORDER

Claimant Evabelen S.’s appeal of South Central Los Angeles Regional Center’s decision to terminate funding for ILS is denied. South Central Los Angeles Regional Center may terminate funding for Claimant’s ILS.

DATED: July 1, 2011.

DAVID ROSENMAN
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.